IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 198 OF 2006.

Mahindra & Mahindra Limited. ... Petitioner.

V/s.

1. Dwarkanath Babaji Dalvi.

2. Mahindra & Mahindra Workers Union. ... Respondents.

J.P.Cama, senior counsel with C.U.Singh, senior counsel with R.N.Shah and Sanjay Udeshi i/b. M/s.Sanjay Udeshi & Co. for the petitioner.

Mrs.Gayatri Singh with Ms.Apoorva Kaiwar for the respondents.

CORAM: V.C.DAGA, J.

DATED: 27th February 2006.

JUDGMENT :

. This petition filed under Article 226 of the Constitution of India is directed against the order of the Industrial Court, Mumbai dated 25th October, 2005 dismissing the revision application preferred by the petitioner- employer challenging the order dated 25 October, 2005 passed below Exh.U-2 by the Sixth Labour Court, Mumbai allowing interim application with direction to withdraw the unfair labour practices complained of; pending

hearing and disposal of the substantive complaint with further direction to reinstate the complainant within a period of one month with full wages till the date of disposal of the said complaint.

Factual Matrix :

2. The respondent No.1- complainant has filed complaint under item 1(a)(b)(d) and (f) of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short) with material facts and particulars described in the complaint.

3. The complainant has pleaded in the complaint details of the act of victimisation practised by the petitioner. The complainant has also pleaded in the complaint that the petitioner-employer did not conduct any departmental enquiry whatsoever against him. That he has been deprived of his right of being heard, which was available to him under the Certified Standing Orders applicable to the petitioner- employer.

4. The complainant has further submitted in the complaint that none of the allegations made against him in the termination order dated 16th

July, 2004 has been proved by the petitioner-employer. That there is no provision in the certified standing orders of the Company to terminate services of the workman by way of punishment in the garb of order of "discharge simplicitor". That the impugned termination order is not only contrary to the certified standing orders applicable to the petitioner- employer but the same was issued with undue haste. That is how he tried to make out prima facie case to claim interim relief in the complaint.

5. The petitioner- employer denied all the above contentions. The petitioner raised plea that at the time of termination the complainant was not performing duties of the "workman" falling within the meaning of section 2(s) of the Industrial Disputes Act, 1947 ("I.D.Act" for short); as such he could not be permitted to invoke the jurisdiction of the Labour Court. It is sought to be canvassed that the order of termination is nothing but an order of termination simplicitor since the petitioner- employer had lost confidence in the petitioner.

6. The Labour Court, with the aforesaid rival pleadings was pleased to hear the interim application and grant the same by a reasoned order as described in the opening part of this order.

7. Revision under section 44 of the MRTU and PULP Act, having been preferred by the petitioner-complainant against the above order of the Labour Court came to be dismissed. The Industrial Court by its detailed reasoned order dated 25th October, 2005 was pleased to confirm the order of the Labour Court.

8. The petitioner- complainant has filed this writ petition under Article 226 of the Constitution of India questioning the impugned judgments and orders of the Courts below.

Rival Contentions :

9. Mr.J.P.Cama with Mr.C.U.Singh, learned senior counsel appearing for the petitioner, would, inter alia, submit that no interim relief by way of final relief could have been granted by the Labour Court in favour of the complainant.

That the revisional court misdirected itself in passing the impugned order in so far as it failed to take in to consideration that the order of the Labour Court was unsustainable in the eye of law. Reliance was placed on the judgment of the Division Bench of this Court in the case of **M.S.R.T.C., Nagpur v. Raju Mahadeorao Bhagwatkar,** 2003 II CLR 797.

10. Mr.Cama submits that the Tribunal should not have straightway, without anything more, directed reinstatement of a dismissed or discharged employee, even if no domestic enquiry was conducted. Reliance is placed on the judgment of the learned single Judge of this Court in the case of **Shankar Amrita Deshmukh v. Paper & Pulp Conversions Ltd. & Ors.**, 1995 II CLR 320

11. Mr.Cama would further urge that the issue: whether or not the complainant is a "workman" within the meaning of section 2(s) of the I.D.Act ought to have been tried by recording evidence as a preliminary issue before granting any interim relief in favour of the complainant. In support of this submission he placed reliance on the

judgment of the learned single Judge of this Court in the case of **Pauni Shikshan Sanstha & Ors. v. Sunil R. Uparikar & Ors.**, 2001 I CLR 232. He also relied upon one more judgment of this Court in the case of **Municipal Corpn. of City of Amravti v. A.R.Kamble & Ors.**, 1994 II CLR 180 to buttress his contention.

12. Mr.Cama, alternatively, without prejudice to his above submissions, would submit that the order of termination of complainant is termination simplicitor and not by way of punishment. That, if the act of termination is held to be prima facie; punitive and in breach of principles of natural justice; then it is open for the employer to ask for an opportunity to prove misconduct in the course of adjudication and that the action of the employer can be justified before the adjudicating court. He, thus, submits that the action of the employer in case of industrial worker does not become void *ab-initio*; even if it is found to be in breach of principles of natural justice. As such, in his submission, no interim relief could have been granted by the Labour Court in favour of respondent No.1- workman. Reliance

is placed on the judgment of the Apex Court in the case of **Kamal Kishore Lakshman v. Management of M/s.Pan American World Airways Airways Inc.**, AIR 1987 SC 229 = 1987 LAB.I.C. 218 to support this contention.

13. Mr.Cama would, thus, submit that the action of the employer does not amount to unfair labour practice as such impugned order is liable to be quashed and set aside by allowing petition.

PER CONTRA :
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14. Per contra, Mrs.Gayatri Singh, learned counsel appearing for respondent No.1 would submit that the order of termination though sought to be canvassed as termination simplicitor or retrenchment, but the reading of the order by itself would unequivocally demonstrate that the said order is punitive and the same has been passed in colourable exercise of powers with a view to victimise the complainant. He, being staunch union leader involved in the union activities for past more than 20 years had become an eyesore for the petitioner- employer. In order

to teach him a lesson hasty action of dismissal was taken against him and also to victimise him.

15. Mrs.Singh pressed into service some of the relevant clauses of the termination order to demonstrate an attempt on the part of the petitioner- employer to victimise respondent No.1-complainant for his union activities.

16. Mrs.Singh, relying on para-11 of the termination order; whereby the petitioner-employer has reserved its right to lead evidence before the adjudicating forum to prove misconduct, submits that this right is reserved by the employer knowing full well that the impugned order is very much punitive. She, thus, submits that the termination order itself is pregnant with the clear cut admission that the petitioner was a "workan" being a member of negotiating committee and termination came to be effected in terms of clause-21 of the Certified Standing Orders.

17. Mrs.Singh would further submit that it is the case of the petitioner itself [in ground

No.(vii)] that the issue as to whether a particular person is a "workman" within the meaning of section 2(s) of the I.D.Act is a mixed question of law and facts for which the parties to the proceedings are required to lead evidence to substantiate their respective contentions as such; such an issue cannot be decided at interim stage. She, thus, submits that, if this be the submission in the petition, then the oral contention canvassed by learned senior counsel on behalf of the petitioner- employer that the said preliminary question ought to have been decided first before granting interim relief is contrary to their own contention raised in the petition.

18. Mrs.Singh would further submit that, prima facie; ample material is available on record to justify that respondent No.1- complainant was a "workman" on the date when the punitive action was taken against him. She invited my attention to the various admitted documents available on record in support of her submission, detailed reference of which, at this stage, is not necessary.

19. Mrs.Singh further submits that respondent

No.1- complainant as per settlement or recognised understanding with the employer was exempted from discharging routine official duties being office bearer of the Union. He was always treated as a person discharging clerical work holding the post of Senior Assistant. She further submits that, if the petitioner was office bearer of the union exempted from discharging his duties in the establishment treating as "Zero Production Workman", then one fails to understand how can there be a loss of confidence of the employer in such a person.

20. Mrs.Singh would reiterate that the order of termination is stigmatic, punitive and the respondent No.1- complainant was charged for insubordination in the termination order itself. In her submission, prima facie; conclusion arrived at by the Courts below that the termination order dated 16th July, 2004 is not a termination simplicitor covered by clause-21 of the certified standing orders of the petitioner-employer and, in fact, it is a punitive dismissal is a reasonable and possible view. In her submission, the petitioner- employer has resorted

to order of dismissal founded on alleged misconduct without holding any enquiry and, thus, violated principles of natural justice. It must, therefore, follow that the petitioner- employer has been guilty of unfair labour practices as contended by respondent No.1- complainant.

21. Mrs.Singh would further submit that two courts have examined the termination order. Both of them came to the conclusion that the said order is punitive. In that view of the matter, view taken is a possible view. This Court not being a court of appeal should not interfere with the impugned order. She submits that the discretion has been exercised by the Labour Court in favour of respondent No.1 fairly and properly on the sound principles, that too, on the basis of material available on record. Mrs.Singh, thus, submits that the Labour Court was perfectly justified in finding prima facie; case in favour of respondent No.1- complainant while granting interim relief. Industrial Court did not commit any error in affirming such order of the Labour Court. Not a single extraneous circumstances has

crept in the impugned orders as such this is not a fit case wherein this Court should interfere with the impugned orders in exercise of its writ jurisdiction under Article 226 of the Constitution of India. She, thus, prayed for dismissal of the petition with costs.

Parameters for Grant of Interim Relief :

22. The grant or refusal to grant of interim relief in the complaint is covered by three well established principles viz. (i) whether the complainant has made out a prima facie case; (ii) whether the complainant would suffer irreparable injury in absence of interim relief; and (iii) whether the balance convenience lies in his favour. The burden to prove these three necessities lies on the person seeking interim relief. Interim relief is not granted to a party guilty of delay or who has indulged in suppression of facts. The person seeking interim relief must approach the Court with clean hands. The Court has to see whether the claim is bonafide and whether there is a fair and substantial question

to be tried.

23. With the above parameters, let me consider what should be the relevant consideration while considering the question as to whether or not prima facie case has been made. The Apex Court in the case of **Martin Burn Ltd. v. R.N.Banerjee**, AIR 1958 SC 79 held as under:

> "..... While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence let it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence....."
>
> (Emphasis supplied)

The settled uniform judicial opinion derived from various precedents can be summarised in the following words:

> All that the Court has to see is that on the face of it the person applying for an interim relief has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The balance of convenience also has to be

looked into."

24. In arriving at the balance of convenience, the Court has to weigh the mischief likely to be caused to the applicant, if the interim relief is refused. At the same time, it has also to compare the injury likely to be caused to the other side, if the interim relief is granted.

25. At the same time, it is also to bear in mind the prejudice likely to be caused, if interim relief is to be granted. Apart from considering prima facie case and balance of convenience, the Court/ Tribunal has also to consider as to whether grant or refusal to grant interim relief will cause any irreparable injury to the party to the proceeding. The injury means a legal injury. A lawful exercise of right cannot be described as an injury. So long as the party is acting in the exercise of a right which the law recognises, it cannot be said that the party is committing any wrong leading to any injury. When as a result of the proceeding, it is found that the party has not got the particular right, the position would be

different, but if on the date of the complaint proceeding the party has got the legal right to do a certain act, that act cannot be regarded as a wrong in law nor would its result be regarded as injury.

26. The Court/ Tribunal, while granting interim relief, has also to keep in mind that the interim relief is always granted in the aid of final relief. If the final relief is not available to the person seeking interim relief, then no interim relief can be granted in his favour. In **State of Orissa v. Madan Gopal Rungta**, 1952 SCR 28 : (AIR 1952 SC 12) a Constitution Bench of the Apex Court clearly spelt out the contours within which interim relief can be granted in the following words:

> "An interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding."
>
> (Emphasis supplied)

27. If this be the purpose to achieve which power to grant temporary relief is conferred, it is inconceivable that where the final relief

cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted. It is needless to mention that for a grant of interim relief it is not necessary to have a iron cast case. The prima facie case means the case for enquiry.

Writ Jurisdiction :

28. Having said so, let me turn to the law laid down by the Apex Court with regard to exercise of power under writ jurisdiction under Article 226 of the Constitution.

29. In the case of **The Cooper Engineering Ltd. v. P.P.Mundhe**, A.I.R. 1975 SC 1900 (para-22), the Apex Court has observed thus:

> We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.

In the case of **D.P.Maheshwari v. Delhi Administration and others**, AIR 1984 SC 153 (para-1), the Apex Court has observed thus:

> "It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. we noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial preach, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial pease, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this court under Article 136 may be allowed to be exploited by those who can well afford to wait to the

> detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to bread the resistance of workmen in this fashion. Tribunals and Courts, who are requested to decide preliminary questions must, therefore, ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down.

30. The mandate given by the Apex Court in the above referred judgments is undoubtedly clear and specific that the High Court should refuse to exercise jurisdiction under Article 226 and 227 of the constitution of India at the interlocutory stages, that too, if the petition is directed against the order dealing with preliminary issues.

31. The Apex Court in para-1 of its judgment in the case of **D.P.Maheshwari** (supra) has expressed as under:

> "It is also worthwhile remembering that the nature of the jurisdiction under Article 226 in supervisory and not appellate while that under Article 136 is

> primarily supervisory, but the Court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction, neither the High Court or this Court is required to be too statute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues."

32. It is no doubt true that jurisdiction of the High Court under Article 226 or 227 of the Constitution is not ousted or barred. However, the rider is whether it would be legitimate and proper for the High Court to entertain writ petition under Article 226 and 227 against the orders on preliminary issues passed by the Courts below in exercise of its jurisdiction under Article 226 and 227 of the Constitution. The mandate of the Apex Court in this regard is undoubtedly clear and specific that the High Court should refuse to exercise jurisdiction under these Articles of the Constitution in order to achieve the object of the industrial legislation, similarly also in view of the fact that the parties to the dispute are entitled to challenge validity of the final order passed by the Labour Court on all grounds.

33. It is important to note that unreasonable delay in settlement of industrial dispute destroys the very fibre, object and purpose of the industrial legislation, which not only affects industrial peace and interest of the employee, but ultimately, affects economy of this country. Effective and quick settlement of industrial dispute is extremely essential for the good industrial climate and in order to achieve all these objectives. Hence, in order to bring about tangible results in this regard, it would be just and proper to refuse to exercise jurisdiction under Article 226 or 227 of the Constitution at such interlocutory stage and on preliminary issue.

34. Having noticed one of the parameters of exercise of writ jurisdiction, let me turn to the other facet of the same parameter. In the case of **U.P.Co-operative Federation Ltd. v. Sunder Bros.,** AIR 1967 SC 249; the Apex Court laid down the parameters of the exercise of the powers of judicial review, especially, in case of discretionary orders, in the following words:

> "..... In dealing with the matter raised before it at the appellate stage, the appellate Court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken a different view may not justify such interference. If it appears to the appellate Court that in exercising its discretion the trial Court has acted unreasonably or capriciously or has ignored relevant facts, then it would be open to the appellate Court to interfere with the trial Court's exercise of discretion."

35. Having noticed the contours of the writ jurisdiction, can it be said that the impugned orders passed by the Courts below are perverse. In my opinion, answer has to be in the negative. The view taken by the Courts below is a reasonable and possible view.

Consideration :
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36. In the case in hand, the trial of the complaint is spending on merits. It would not, therefore, be proper on the part of this Court to express opinion one way or the other on the merits of the complaint.

37. On the basis of three well established principles for grant of interim relief indicated hereinabove, in my opinion, it would not be proper to interfere with the orders of the Courts below.

38. The respondent No.1- complainant has made out a strong *prima facie* case and proved balance of convenience in his favour. If his rights are not protected by proper interim relief, he would be thrown on the street and, ultimately, the complainant would suffer irreparable injury. As against this, if the interim relief is allowed to stand, no hardship would be caused to the petitioner- employer since the complainant is not handling any work of the establishment being a zero production workman. Hardship suffered by the petitioner- employer would be comparatively less than that of the workman- a weaker section of the society.

39. Having said so, let me spell out the reasons in support of the aforesaid view taken by me without touching the merits of the contentions raised.

40. In the case of **Chandu Lal v. Pan American Word Airways Inc.**, 1985 (II) LLN 582, the Apex Court held that want of confidence in an employee points to an adverse facet in his character as the essence of the allegation by the employer is that the employee has failed to live upto the expected standard of conduct which has given rise to a situation involving loss of confidence. While holding that such a termination casts a stigma on the employee, the Apex Court held that if the termination in that case was held to be grounded upon conduct attaching a stigma upon the employee, disciplinary proceedings were necessary as a condition precedent to the infliction of termination as a measure to punishment.

41. Having seen the above settled legal position, let me turn to the order of termination. It does, prima facie; makes an allegation involving conduct of respondent No.1- complainant. The order of termination, prima facie; attaches stigma. It is not in dispute that no enquiry was held against the complainant. No opportunity was given to him and hastily an action appears to have

been taken against him.

42. As noticed hereinabove, prima facie case means a case for enquiry. It is the case of the petitioner- employer itself that they will prove misconduct before the adjudicating authority. This submission militates against the contention urged by Mr.Cama that the action of termination is a termination simplicitor. As a matter of fact, submission advanced by Mr.Cama tilts in favour of making a prima facie case for enquiry as canvassed by the complainant which is *sine qua non* for holding prima facie case in favour of respondent No.1 complainant. Unless misconduct is not proved, the termination of the workman cannot be said to be legal. Overwhelming, material is available on record to, prima facie; suggest that respondent No.1- complainant is a workman. It is not necessary to scan each and every piece of evidence in favour of these prima facie observation. Ample material is available on record, highlighted by the learned counsel appearing for respondent No.1- complainant during course of her submissions, which, if accepted in the trial, could establish the submission of the

complainant that he was a workman at the time of impugned action.

43. So far as power to grant interim relief is concerned, the Labour Court and the Industrial Court have ample power under the MRTU and PULP Act to direct the employer to temporarily withdraw the unfair labour practices complained of. The judgment of the Division Bench in the case of **M.S.R.T.C., Nagpur v. Raju Mahadeorao Bhagwatkar** (supra) sought to be relied upon, to which I am a party, is not applicable to the facts of this case. In that case, by way of interim relief reinstatement was granted by the learned single Judge in exercise of powers under Articles 226 and 227 of the Constitution of India. In that context, it was held that reinstatement by writ Court by way of interim relief was not proper. Thus, the reliance placed is devoid of any substance. It cannot be denied that interim relief is granted in the aid of final relief. All the three ingredients for grant of interim relief are established by the complainant. This is not a fit case for exercise of writ jurisdiction under Article 226 of the Constitution.

44. Since I am concurring with the view taken by both the Courts below, I do not think it necessary for me to reiterate the same reasons once again. For the reasons recorded in the impugned orders in addition to what is stated in this order, the petition is liable to be dismissed.

45. In the result, petition is dismissed in *limine* with no order as to costs.

46. At this stage, learned counsel for the petitioner prayed for stay of this order.

Heard.

. The learned counsel for the respondents submits that respondents shall maintain status-quo by not taking any step to implement the impugned order for two weeks from today.

(V.C.DAGA, J.)